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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1973

No. 73-754

RAYMOND K. PROCUNIER, Director, California Department of Corrections, et al., *Appellants,*

vs.

BOOKER T. HILLERY, JR., et al., *Appellees.*

**On Appeal from the United States District Court for the Northern District of California**

## APPELLANTS' BRIEF

### OPINION BELOW

The opinion of the three-judge panel of the United States District Court for the Northern District of California (Appendix A to the Jurisdictional Statement filed herein) is reported at 364 F.Supp, 196.

### JURISDICTION

The order of the district court was entered on August 16, 1973. Notice of appeal to this Court was

filed in the district court on December 12, 1973. The appeal was docketed in this Court on November 9, 1973, as No. 73-754. On January 7, 1974, this Court noted probable jurisdiction and granted the motion of appellees for leave to proceed in forma pauperis. On January 21, 1974, this Court ordered argument in the case consolidated with *Pell v. Procunier,* No. 73-918. The jurisdiction of this Court to review the decision of the three-judge panel by direct appeal is conferred by Title 28, United States Code sections 1253 and 2101(b).

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**STATE PROVISION INVOLVED**

California Department of Corrections Manual Section 415.071: "Press and other media interviews with specific individual inmates will not be permitted."

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**QUESTIONS PRESENTED**

1. Does the First Amendment afford a prison inmate a right to demand and conduct face-to-face meetings with the press and other media?

2. Do prison officials have discretion to control an inmate's access to the press and other media by regulations which are rationally related to justifiable purposes of imprisonment?

3. When it is rationally related to justifiable purposes of imprisonment, may prison officials limit an inmate's access to the press and other media to written communications and to face-to-face meetings dependent upon the random selection of inmate interviewees?

## STATEMENT OF THE CASE

### A. The Paramount Responsibilities of the Department of Corrections.

Appellant, Raymond K. Procunier, has had approximately 26 years of experience in the field of corrections. With the exception of approximately one year, this experience has been gained as an employee of the California Department of Corrections. He joined the Department in April of 1948 as a correctional officer at one of the state institutions. He subsequently held a variety of institutional and departmental positions. In 1967, he became Director of Corrections of the State of California (A. 122, 280-281).

Director Procunier's position is that the Department has a dual obligation: first, it must insure that persons who are committed to the state institutions are housed securely; second, it must do everything within its power and resources to prepare such persons to return to free society (A. 292). The magnitude of the Department's obligations is demonstrated by the fact that approximately 20,000 convicted felons are currently housed in the state institutions (A. 281-282). A formidable obstacle to the fulfillment of these obligations is the further fact that 34 inmates were murdered during 1972, and 10 correctional officers were murdered between 1970 and February 14, 1973 (A. 256).

As set forth in the opinion below, on August 21, 1971, "[d]uring an escape attempt at San Quentin three staff members and two inmates were killed. This

was viewed by the officials as the climax of mounting disciplinary problems caused, in part, by its liberal posture with regard to press interviews, and on August 23 § 415.071 was adopted to mitigate the problem." *Hillery v. Procunier,* 364 F.Supp. 196, 198 (N.D.Cal. 1973). The Department's decision to adopt a stricter policy regarding inmate interviews with the press and other media was prompted by these events and was premised on a judgment that former practices had adversely affected prison security and the rehabilitation of inmates, and had imposed serious burdens on the correctional officers (A. 249, 286-288, 292-293, 296-297).

The adoption of section 415.071 was preceded by careful consideration of alternative solutions to the problems facing the Department. Director Procunier repeatedly consulted with his own staff in order to arrive at a solution for controlling the problems which had arisen under the Department's previous interview policy (A. 302). The Department attempted to have a modified version of section 415.071, but found that it would not work (A. 302); imposition of a selective regulation was rejected as legally suspect (A. 303). As stated by Director Procunier, section 415.071 was prescribed as an administrative remedy only "after a great deal of agonizing . . ." (A. 302).

**B. The Consequences of the Department's Prior Interview Policy.**

Prior to settling upon the policy of section 415.071, the Department permitted named inmates to be interviewed by accredited representatives of the news media

(A. 282, 286). However, certain named inmates became the subject of extensive press coverage. One inmate for example, held 66 interviews over an 18-month period (A. 297). Another inmate, who subsequently was killed during the escape attempt of August 21, 1971, held 33 interviews from August of 1970 through June of 1971 (A. 285-286). In January of 1969, this inmate along with two others had been charged with the murder of a correctional officer at one of the state institutions (A. 285). At the time that the correctional officer was killed, this inmate was already known within the institution (A. 285). Press interest became focused on this inmate and his codefendants (A. 293). Partially as a result of the extensive press attention, this inmate became, in effect, a public figure (A. 285). The results of his numerous interviews with the press were carried in almost all of the publications which came into the state institutions (A. 286-287). This inmate utilized his frequent contact with the press as a vehicle for reaching dissident inmates. His message to such inmates was essentially that the manner in which to change the correctional system was to be non-cooperative, and that any cooperation would serve to perpetuate the system (A. 287).

**C. The Administrative Decision that a Change in Interview Policy was Essential.**

The Department's decision to alter its policy regarding inmate interviews was premised on its determination that its previous policy was impairing the ability to fulfill its dual obligation to maintain security and

to foster rehabilitation, and was imposing a serious burden on the administration of the state correctional facilities (A. 286-288, 292-293, 296-297).[1]

**1. Threats to Security**

The Department determined that an augmentation of disciplinary problems within its institutions was in part the result of the expansive press coverage which was being afforded to inmates who advocated a policy of non-cooperation (A. 287-288). In terms of management principles, it was the Department's opinion that these were destructive messages (A. 287). Under the Department's unrestricted policy, newsmen could focus upon several inmates, and these inmates could be interviewed by a large number of newsmen, thus leading to extensive coverage (A. 253). It was believed that the security risk posed by an inmate was increased as press coverage of the inmate increased (A. 263).

The Department's view was that the tragic events of August 21 were partially attributable to the extensive press attention which had been afforded to one of the inmates who was killed on that day (A. 249). The Department's concern was that the extensive press exhibition afforded to this inmate had served to magnify his negative leadership role, and to influence other inmates to also adopt an attitude of non-cooperation (A. 287). The Department found that the extensive press coverage had created in this inmate a false sense of status, and had conveyed to other in-

[1]Throughout the proceedings below appellants repeatedly emphasized that section 415.071 was essential to the fulfillment of their obligations (A. 46-47, 87-89, 116, 199, 274).

mates who were confined in the same lock-up unit a false perception of this inmate, and that this contributed to the tragic occurrences of August 21 (A. 255).

More recently, the Department has been confronted with the phenomena of rival groups of inmates (A. 249). The killing of 34 inmates during 1972 was partially attributable to the prevalence of gang warfare within the correctional institutions (A. 256). One method by which the leadership of such groups can attempt to assert influence is through press attention to their actions. Accordingly, the Department, the administrative agency with penal expertise, has determined that such press coverage might serve to set one group of inmates against another. The existence of group rivalry poses a serious problem within the institutions and can lead to violent confrontations between inmates (A. 249); stimulation of rival leaders by coverage of gang activities can serve to plant the seed of further violence (A. 256-257).

**2. Impairment of Rehabilitation**

One of the major considerations which led Director Procunier to conclude that a change of policy was required was the adverse effect which the Department's unrestricted interview policy was having on the Department's efforts at rehabilitation of inmates (A. 292-293). As stated by Director Procunier, "The first thing that happens, we found out over the years, collectively, that before a man makes any kind of a change, there must be a change in his attitude. If a man is encouraged by increased notoriety and this encourages others to pursue the same thing, their atti-

tude is such that we can't deal with them in a constructive way. This is one of the major considerations in changing the policy." (A. 292-293). The Department felt very strongly that the extensive press coverage afforded to an inmate who espoused a practice of non-cooperation encouraged other inmates to adopt this attitude and impaired the institution's efforts to deal with the inmates in a constructive manner (A. 292-293).

Director Procunier has also recognized that if an inmate is continually involved in conducting interviews he will have little time to concentrate on other useful activities such as attendance of classes, meeting with counsellors, obtaining psychiatric treatment and participating in other programs (A. 129).

**3. Burdens on Administration**

The Department was also concerned with the time and effort which was involved in escorting inmates and newsmen under the unrestricted policy (A. 246-247). If the inmate was in lockup status, a half-day of employee time was required in order for an interview of one hour or less to be held (A. 296-297). Given the number of inmates confined in the Department's institutions, the potential administrative burden of an unrestricted policy is staggering. If only ten per cent of the inmates held semi-annual interviews, some 4,500 interviews would have to be arranged by the Department's staff (A. 130).

Due to the wide coverage afforded one inmate, the Department also found that it would be administratively impossible to review all incoming publications

which covered the interviews (A. 286-287). California Penal Code section 2600 recognizes the right of an inmate to "purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office." This same statute recognizes the authority of prison officials to exclude "any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence; . . ." As the results of the interviews were in almost all of the publications coming into the institution, and as a large number of publications came into the institution, it would have been administratively impossible to review each publication in order to exercise this authority to exclude specific issues of specific publications (A. 286-287).

**D. Interview Policy after Adoption of Section 415.071.**

Section 415.071 provides: "Press and other media interviews with specific individual inmates will not be permitted." As found by the district court, "[t]he regulation does not effect an absolute ban on all media interviews with inmates. The practice under the rule is to allow media representatives to enter the prison and, aided by the warden, select at random interviewees from the prison population. (Footnote omitted.) Thus, media representatives are able to interview an inmate, but unable to select a particular inmate. Similarly, a prisoner who happens to be randomly selected can express himself personally to the newsmen or journalists, but cannot initiate an interview himself. (Footnote omitted.)" *Hillery v. Procunier,* 364 F.Supp. 196, 199 (N.D.Cal. 1973). As recognized by

the district court, section 415.071 does not preclude direct written communications between press representatives and specifically designated inmates; it has no application to face-to-face meetings between inmate authors and their publishers; it does not prohibit face-to-face meetings between press representatives and inmates who are selected at random. *Hillery, supra,* 364 F.Supp. at 199, n. 3, 200.

**1. Written Communications**

By its terms, section 415.071 applies only to interviews. Throughout the proceedings below, appellants repeatedly observed that the Department permitted individual inmates to send letters and manuscripts to media representatives, and that the plaintiffs had not alleged that the Department had in any way interfered with their written communications (A. 14, 18, 47, 120, 199, 274).

In support of a motion to dissolve a temporary restraining order which had been issued by a single district court judge pending the hearing before the three-judge court (A. 3), appellants observed that there was not "any showing that plaintiffs or other inmates are unable 'to effectively communicate information concerning their confinement in San Quentin State Prison' by such correspondence." (A. 120). Appellees' pleadings suggest that any assertion that appellees were illiterate and incapable of effectively communicating by writing would have been specious.[2]

[2]Although both the complaint and the first amended complaint were filed as a class action (A. 5, 25-26), the case was never certified as a class action. *See* Fed. R. Civ. P. 23(c).

The complaint was filed by inmate Hillery *in pro per* and alleged that inmate Hillery was the owner of two short stories (A. 7). The amended complaint alleged that "[t]he purpose of such visits is to discuss publication of articles written by the prisoners and/or is to gain information for articles to be written by the visiting reporter." (A. 23). The amended complaint realleged that inmate Hillery was the author of two short stories (A. 26). The amended complaint further alleged that inmate Spain "is a talented black writer" and that "[o]ne of his letters has already been published in a recent book, edited by plaintiff PELL, *Maximum Security,* Dutton 1972." (A. 27; *see also* A. 159-163).[3]

Individual inmates, of course, also have access to the media through other visitors and correspondents, such as family members, friends, attorneys and clergymen (A. 262-263; *see also* A. 274). Accordingly, access to the media is not dependent on an inmate's literary abilities.

**2. Meetings with Publishers**

Meetings between inmate authors and prospective publishers are not considered news media interviews, and hence are not prohibited by section 415.071. Wardens and superintendents are authorized to permit such visits on a case-by-case basis. On at least one occasion, an inmate has been allowed to have visits

[3]In its opinion, the court suggested that written communications were inadequate if the inmate were inarticulate or if his story required further verification. *Hillery v. Procunier,* 364 F.Supp. 196, 201 (N.D. Cal. 1973). There is nothing in the record of this case which indicates that appellees are illiterate or inarticulate.

with a "ghost writer" who assisted him in the preparation of a manuscript (A. 124).[4]

The contents of an inmate's manuscript is not a ground for denying such a meeting unless the contents would be excludable from the institution under California Penal Code section 2600 (A. 56).[5] Experience indicates, however, that just as is the case with other authors, inmate authors can obtain publication of their manuscripts without the necessity of face-to-face meetings with their publishers. This is reflected by the fact that six inmates at San Quentin, who had been condemned, had their writings published without having had interviews with their publishers (A. 18-19, 42).[6]

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[4]During the course of the proceedings below, appellants noted that the meeting sought by appellee Hillery was thus not precluded by section 415.071 (A. 111, 119).

[5]California Penal Code section 2600(4) provides in pertinent part as follows: "Pursuant to the provisions of this section, prison authorities shall have the authority to exclude obscene publications or writings, and mail containing information concerning where, how, or from whom such matter may be obtained; and any matter of a character tending to incite murder, arson, riots, violent racism, or any other form of violence; and any matter concerning gambling or a lottery."

[6]The names of these inmates and their publications are as follows: Massie: "Teen Recollections from Death Row," Teen Magazine, January 1971; "Death by Degrees," Esquire, 1970 or 1971; Eli: "A Land Called Freedom," Los Angeles Free Press, March 26, 1971; Welch: "From Christ to Crime to Death Row," Baptist Men's Journal, March 10, 1971; "God is My Cell Mate," Christian Economics, May 6, 1971; "Death Row S. Q. Prison," City Magazine, Ltd., November 22, 1971; "Money Can't Buy God," Christian Freedom Foundation, August 19, 1971; "Christians Come to Jail," Christian Freedom Foundation, September 3, 1971; Robinson: "The End Was the Beginning," Christian Freedom Foundation, July 30, 1971; Morse: "The One-Way Street," Listen, December 27, 1971; King: "Happiness is Knowing God," Marian Helpers Bulletin, November 26, 1971. (A. 19, 42).

**3. Meetings with Press Representatives on General Topics**

Section 415.071 does not bar press representatives from the state's correctional institutions, nor does it bar inmates in general from being interviewed by press representatives (A. 57-58, 282, 288-289). Press representatives may tour the institutions, and such tours can cover the maximum and minimum security sections within the institution (A. 243-244, 259). During the course of such tours, the press representatives may interview any inmate on any subject (A. 243-244, 290). If the press representative happens to be familiar with an inmate, he is not precluded from talking to him (A. 259). Similarly, inmates are not precluded from asking the press representative whether he wishes to talk with them (A. 259). If security considerations permit, prison personnel will step aside in order that the interview can be conducted in confidence (A. 244, 300).

**4. Meetings with Press Representatives on Special Topics**

Section 415.071 does not bar press representatives from entering the institution for the purpose of gathering information for a story on a specific topic, nor does it bar inmates in general who have information pertaining to the topic from being interviewed (A. 242-243). If the press representative wishes to do a story on a specific program, such as Alcoholics Anonymous or an ethnic study course, he may sit in on the group meeting and the inmate participants may be interviewed by him (A. 243).

Although the press representatives may not designate by name a specific inmate to be interviewed, they

may designate a group of inmates to be interviewed. Accordingly, when one of the state's major newspapers informed the Department that it wished to do a story on the death penalty and wished to obtain the opinions of men who had had a death sentence commuted to a life sentence, the Department asked the warden and superintendent at three institutions to submit a list of four or five inmates who would consent to such interviews. The reporters then interviewed the inmates and wrote the story (A. 242-243, 289). The determination as to whether such interviews are to be confidential is made on an individual basis (A. 290-291).

Similarly, at the time that death row was being phased out, a television reporter asked to film activities on death row and to speak to inmates whom he might encounter. The television reporter was permitted to conduct this film interview (A. 243).

**E. The Determination of the District Court.**

The district court concluded that inmates have a right under the First Amendment to face-to-face meetings with media representatives, that the limitation of such face-to-face meetings resulting from section 415.071 could be justified only by a compelling state interest, and that appellants had failed to demonstrate such an interest. *Hillery v. Procunier,* 364 F.Supp. 196, 200-202 (N.D.Cal. 1973). The district court held that section 415.071 was unconstitutional, and granted summary judgment in favor of plaintiff inmates. *Hillery, supra,* 364 F.Supp. at 204.

## SUMMARY OF ARGUMENT

On August 21, 1971, during the course of an escape attempt from one of California's correctional facilities, three staff members and two inmates were killed. The Department concluded that these tragic events were related to its unrestricted interview policy. Under this policy, individual inmates could monopolize press attention, and use this as a vehicle for enhancing their influence over other inmates, and for promulgating their thesis that inmates should refuse to cooperate with correctional authorities. One of the inmates killed on August 21, 1971, had utilized his access to the press to achieve such destructive objectives. The Department concluded that its unrestricted policy impaired its ability to maintain security and to promote rehabilitation, and that it imposed a serious administrative burden on its staff. After considering alternative solutions, Director Procunier adopted section 415.071.

Under section 415.071 inmates can be interviewed only on a random selection basis. This solution affords inmates in general an opportunity for face-to-face interviews with the press, while at the same time reducing the possibility that a specific inmate will monopolize press attention with destructive consequences.

Section 415.071 does not violate the constitutional rights of prisoners. Even in society, the exercise of First Amendment rights is necessarily circumscribed by various factors. Within a correctional institution, these same factors are equally operative. However,

they must be viewed in the light of the considerations which underlie the correctional system, for such considerations necessarily limit the rights of prisoners. A consideration of the physical realities of imprisonment, the purposes to which prison facilities are dedicated, the legitimate exercise by prison authorities of established governmental powers, and the status of a prisoner in relation to the achievement of the legitimate goals of the correctional system establishes that individual prisoners do not retain a right to demand and to conduct face-to-face meetings with representatives of the media.

Prison regulations must be upheld if they are rationally related to the furtherance of the justifiable objectives of our penal system. As incarceration necessarily results in a justifiable limitation of rights, regulations which apply to all prisoners do not create suspect classifications or impinge on fundamental rights. It is clear that section 415.071 does not have such an effect. It applies to all prisoners. It does not deprive prisoners in general of an opportunity to meet face-to-face with the press. It does not deprive individual prisoners of an opportunity to communicate in writing directly with representatives of the press. It does not deprive individual prisoners of an opportunity to communicate with representatives of the press through other visitors and correspondents, such as family members, friends, attorneys, and clergymen.

Additional considerations affirmatively sustain the application of a rational basis test. The determina-

tion of what administrative remedies must be employed to maintain security and to promote rehabilitation must necessarily be based on an informed knowledge of conditions within the state's correctional facilities. The choice of alternative remedies involves the application of expert judgment in an area which is fraught with uncertainties. The administration of state correctional facilities is an activity in which each state has a strong interest and which is intrinsically related to state laws, regulations, and procedures.

Section 415.071 is a valid regulation as it is rationally related to the justifiable objectives of maintaining security and promoting rehabilitation. It imposes a narrow limitation, which serves to eliminate the impairment of security and rehabilitative efforts which were occasioned prior to its adoption. The state has a compelling interest in insuring the maintenance of security and the promotion of rehabilitation.

---

## ARGUMENT

### I

### THE FIRST AMENDMENT DOES NOT AFFORD A PRISON INMATE THE RIGHT TO DEMAND AND CONDUCT FACE-TO-FACE MEETINGS WITH THE PRESS AND OTHER MEDIA.

In *Price v. Johnston,* 334 U.S. 266, 285 (1948), this Court stated, "a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court." Accordingly, this Court recognized that even in the context of a judicial

proceeding, wherein the prisoner's life or liberty was at stake, the prisoner had no absolute right to meet face-to-face with the judicial officers who would decide his case. This limitation on a prisoner's rights was premised on the observation that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price, supra,* 334 U.S. at 285. This Court observed that "[o]ral argument on appeal is not an essential ingredient of due process and it may be circumscribed as to prisoners where reasonable necessity so dictates." *Price, supra,* 334 U.S. at 286.

The district court held "that face-to-face interviews with media representatives are a vital element in the prisoners' rights under the First Amendment." *Hillery v. Procunier,* 364 F.Supp. 196, 200-201 (N.D. Cal. 1973). In this regard the district court was mistaken as appellees' First Amendment rights are necessarily limited by the special considerations underlying the penal system; face-to-face meetings with press and other media representatives are not an essential aspect of appellees' retained rights under the First Amendment and may be limited where reasonable necessity dictates.

As this Court has recently reaffirmed, " 'The First and Fourteenth Amendments have never been treated as absolutes [footnote omitted].' (Citations omitted)." *Miller v. California,* ..... U.S. ....., 93 S.Ct. 2607, 2614 (1973). This Court has explicitly rejected the notion "that people who want to propagandize protests or

views have a constitutional right to do so whenever and however and wherever they please." *Adderley v. Florida,* 385 U.S. 39, 48 (1966). Accordingly, it is appropriate to consider first some of the factors which necessarily curtail the First Amendment rights of citizens who are not confined in penal institutions, and to consider then whether similar factors necessarily limit the First Amendment rights of appellees who are imprisoned.

A citizen's ability to have his views reported by the media is necessarily circumscribed by the rights of the media. This Court has recognized that even with regard to the use of the medium of broadcasting, wherein the public's right is paramount to the First Amendment right of the broadcasters, the First Amendment does not require that the citizen be given a vested right of access to the medium of broadcasting. *See Columbia Broadcasting Sys., Inc. v. Democratic Nat. Com.,* 412 U.S. 94, 126-127 (1973). This Court suggested that insofar as access to this limited medium is concerned, "The admonition of Professor Meiklejohn that 'What is essential is not that everyone shall speak, but that everything worth saying shall be said' is peculiarly appropriate. (Citation omitted)." *Columbia Broadcasting Sys., Inc., supra,* 412 U.S. at 122. As this Court succinctly observed, "To agree that debate on public issues should be 'robust, and wide-open' does not mean that we should exchange 'public trustee' broadcasting, with all its limitations, for a system of self-appointed editorial commentators." *Columbia Broadcasting Sys., Inc., supra,* 412

U.S. at 125. This Court found that the editorial power of a privately owned newspaper was even more extensive, being limited "by only two factors: first, the acceptance of a sufficient number of readers—and hence advertisers—to assure financial success; and, second, the journalistic integrity of its editors and publishers." *Columbia Broadcasting Sys., Inc., supra,* 412 U.S. at 117. A citizen in free society thus has no absolute right under the First Amendment to have his views reported by others.

A citizen's ability to engage in communicative conduct in a public building is necessarily circumscribed by the purposes to which the building is dedicated.[7] As stated in *Adderley v. Florida,* 385 U.S. 39, 47 (1966), "The State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." In *Adderley* it was recognized that jails are built for security purposes and are not open to the public. *Adderley, supra,* 385 U.S. at 41. This Court explicitly rejected the contention that since the jail grounds were an appropriate place for a civil rights demonstration there was a constitutional right to remain there over the objections of the custodian. *Adderley, supra,* 385 U.S. at 47.

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[7]A citizen's ability to engage in communicative conduct on private property is similarly circumscribed. *See Lloyd Corp. v. Tanner,* 407 U.S. 551, 567-568 (1972). In *Lloyd* this Court upheld "the right of a privately owned shopping center to prohibit the distribution of handbills on its property when the handbilling is unrelated to the shopping center's operations" as against "an asserted First Amendment right to distribute handbills in [the] shopping center, . . ." *Lloyd, supra,* 407 U.S. at 552, 570.

Similarly, in *Cox v. Louisiana*, 379 U.S. 559, 562 (1965), it was recognized that "[t]here can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create." It was held that a statute[8] which prohibited such conduct was "a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." *Cox, supra*, 379 U.S. at 564. Accordingly, even where a public building has a symbolic value for purposes of conveying a particular message, a citizen has no right to use the public building as a forum for communicative conduct which interferes with purposes to which the building is dedicated.[9]

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[8]The statute which was upheld in *Cox* provided as follows: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . . shall be fined not more than five thousand dollars or imprisoned not more than one year or both." La.Rev.Stat. §14:401 (Cum.Supp. 1962). *Cox, supra*, 379 U.S. at 560.

[9]As stated by the Second Circuit, "The First Amendment is not a license to impede and disrupt the orderly performance of an essential function of government, (citation omitted). The public and private interests at stake must be weighed. For instance, the Government's use of a public building for a valid and specific governmental function entitles it to limit the exercise within that building of First Amendment rights to the extent that such exercise will interfere with the performance of that function. (Citation omitted.)" *United States v. Farinas*, 448 F.2d 134, 138 (1971), cert. den., 405 U.S. 934. In *Farinas*, the Second Circuit recognized that the government could prohibit the distribution of anti-war literature and the giving of anti-war speeches inside an induction

A citizen's right to meet face-to-face with others is necessarily circumscribed by the legitimate exercise of established governmental powers. In *Zemel v. Rusk*, 381 U.S. 1, 3 (1965), a citizen contested the validity of a refusal by the Secretary of State to validate his passport for travel to Cuba. The citizen alleged "that the 'travel ban is a direct interference with the First Amendment rights of citizens to travel abroad so that they might acquaint themselves at first hand with the effects abroad of our Government's policies, foreign and domestic, and with conditions abroad which might affect such policies'." *Zemel, supra*, 381 U.S. at 16. This Court first concluded that the Secretary of State had statutory authority to refuse to validate a citizen's passport for travel to Cuba. *Zemel, supra*, 381 U.S. at 7-13. While this Court recognized that the Secretary's action did reduce the flow of information regarding Cuba, this Court found that the resulting inhibition on the citizen's movement did not deprive the citizen of a First Amendment right. *Zemel, supra*, 381 U.S. at 16-17. In *Kleindienst v. Mandel*, 408 U.S. 753, 754 (1972), citizens contended that the refusal to allow an alien scholar to enter the United States for the purpose of

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center when such conduct interfered with the orderly conduct of the induction process. *Farinas, supra*, 448 F.2d at 1338-1339. In *LeClair v. O'Neil*, 307 F.Supp. 621, 625 (D.Mass. 1969), aff'd. 401 U.S. 984 (1971), the court observed, in reference to the right of members of a welfare organization, a welfare recipient, and a paid organizer, that "[w]hatever First Amendment rights existed in the Welfare Office, they could not be exercised at the expense of the primary purpose the office was designed to serve."

meeting with them violated the citizens' rights under the First Amendment. This Court declined to dispose of the First Amendment contentions of the citizens on the ground that the mode of regulation pertained to physical movement. *Mandel, supra,* 408 U.S. at 764. Similarly, this Court declined to find that the First Amendment contentions were obviated by the fact that the citizens had access to the alien's ideas through means other than face-to-face meetings. *Mandel, supra,* 408 U.S. at 765.[10] Nevertheless, this Court determined that the citizens' right to meet face-to-face with the alien scholar was necessarily circumscribed by the legitimate exercise of established governmental power. This Court concluded as follows: "In summary, plenary congressional power to make policies and rules for the exclusion of aliens has long been firmly established. In the case of an alien excludable under § 212(a)(28), Congress has delegated conditional exercise of this power to the Executive. We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant." Accordingly, a citizen's direct communications with others is necessarily circumscribed

[10]This Court recognized, however, that "alternative means of access to Mandel's ideas might be a relevant factor were we called upon to balance First Amendment rights against governmental regulatory interests—. . ." *Mandel, supra,* 408 U.S. at 765.

by the legitimate exercise of established governmental powers.[11]

A citizen's rights under the First Amendment are also necessarily circumscribed by the citizen's status, when his status relates to the achievement of important governmental objectives. In *United States C. Serv. Com'n v. National Ass'n of Let. Car.*, ..... U.S. ....., 93 S.Ct. 2880, 2886, 2891 (1973), and in *Broadrick v. Oklahoma*, ..... U.S. ....., 93 S.Ct. 2908, 2918 (1973), this Court held that the Constitution does not preclude prohibiting employees of the federal and state governments from engaging in identifiable acts of political management and campaigning even though other citizens have a right under the First and Fourteenth Amendments to engage in such conduct. This Court observed that such a holding "would no more than confirm the judgment of history, a

[11]This Court's recent decision in *California v. LaRue*, 409 U.S. 109 (1972), also demonstrates that conduct which is protected by the First Amendment is necessarily limited by the legitimate exercise of established governmental power. In *LaRue*, holders of liquor licenses and dancers at premises operated by such licensees contended that certain regulations, which were issued by the state agencies charged with authority to issue and to revoke such licenses, and which prohibited certain forms of entertainment in licensed premises, were unconstitutional on their face. *LaRue, supra*, 409 U.S. at 110-112. This Court recognized that the regulations on their face would prohibit some visual presentations which were protected under the First Amendment. *LaRue, supra*, 409 U.S. at 116-118. Nevertheless, this Court concluded as follows: "The Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational one. Given the added presumption in favor of the validity of the state regulation in this area that the Twenty-First Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution. (Footnote omitted.)" *LaRue, supra*, 409 U.S. at 109.

judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited." *National Ass'n of Let. Car., supra,* 93 S.Ct. at 2886. This Court recognized that the prohibition was justified by the government's interest in the impartial administration of laws, the fostering of public confidence, the prevention of the use of governmental employees by political machines, and the prevention of the coercion of governmental employees. *National Ass'n of Let. Car., supra,* 93 S.Ct. at 2890-2891. Although this Court recognized that it could be urged that prohibiting coercion might sufficiently protect government employees, this Court did not find any constitutional obstacle to the use of the more restrictive alternative of prohibiting governmental employees from engaging in identifiable political acts. *National Ass'n of Let. Car., supra,* 93 S.Ct. at 2891. It is thus apparent that a citizen may be prohibited from exercising certain rights under the First Amendment when because of the citizen's status, the prohibition serves to achieve important governmental objectives.

The decisions of this Court thus establish that the First Amendment rights of citizens are necessarily circumscribed by a variety of factors. Prior to considering the manner in which these factors are to be applied to the factual situation presented by this

case, it is appropriate to consider the decision in *Dash v. Commanding General, Fort Jackson, South Carolina,* 307 F.Supp. 849 (D.S.Car., Col.Div. 1969), aff'd 429 F.2d 427 (4th Cir. 1970), *cert. denied,* 401 U.S. 981. This decision involved the application of several of these factors to circumstances, which while not directly analogous to those presented here, are in some respects comparable.

In *Dash,* servicemen contended that a regulation of the Post Commander, which restricted the distribution of published material on post, and the refusal of the Post Commander to permit a public, open meeting on post for the purpose of a free discussion of the Viet Nam war and related complaints were unconstitutional. *Dash, supra,* 307 F.Supp. at 850. The court rejected the contentions of the servicemen, concluding that the Post Commander could restrict the distribution of literature on post and could ban public meetings on post when there was a reasonable basis for concluding that such activities represented "a clear danger to the loyalty, discipline, or morale of his troops." *Dash, supra,* 307 F.Supp. at 855, 856.

The court began its discussion of the merits of the case as follows:

> "At the outset it should be noted that a serviceman's right of free speech is not absolute. (Footnote omitted). With his induction into military service, he 'necessarily accepts some abridgment of his right of free speech.' (Footnote omitted). Thus, in a recent attempt to order and rationalize existing decisions interpreting the First Amendment, a thoughtful commentator explicitly

refrained from incorporating the military into the general scheme of such rights, remarking that, 'To a certain extent, at least, the military sector or society must function outside the realm of democratic principles, including the principle of freedom of expression' and, 'Certainly, members of the armed forces, at least when operating in that capacity, can be restricted in their right to open discussion.' (Footnote omitted). This is true because, as the Supreme Court has put it, 'The military constitutes a specialized community governed by a separate discipline from that of the civilian.' (Footnote omitted). It has been aptly observed that, 'An army is not a deliberate body,' (footnote omitted) and, it may be added, it cannot function as a debating society. 'Its law is that of obedience' and discipline, and its strength lies in 'Vigor and efficiency on the part of the officer, and confidence among the soldiers * * *.' (Footnote omitted). As a recent decision phrases it, 'The need for discipline (in the Army), with the attendant impairment of certain rights, is an important factor' in the operation of an Army. (Footnote omitted)." *Dash, supra,* 307 F. Supp. at 852.

The court did not go so far, however, as to find that First Amendment rights were completely inapplicable to servicemen. The court quoted from a decision of the Court of Military Appeals in which it was held that " 'servicemen have all the protections of the Bill of Rights except such as are expressly or by necessary implication not applicable by reason of the peculiar circumstances of the military.' (Footnote omitted)." *Dash, supra,* 307 F.Supp. at 853. The

court noted, however, that the judiciary has been reluctant to interfere with military decisions regarding military personnel. *Dash, supra,* 307 F.Supp. at 853. The court quoted the following observation made by former Chief Justice Warren in The Bill of Rights and the Military, 37 N.Y.Univ.L.Rev. 181, 186-7 (1962): "'[¶] So far as the relationship of the military to its own personnel is concerned, the basic attitude of the Court has been that the latter's jurisdiction is most limited. * * * [¶] This "hands off" attitude has strong historical support of course. While I cannot here explore the matter completely, there is also no necessity to do so, since it is indisputable that the tradition of our country, from the time of the Revolution until now, has supported the military establishment's broad power to deal with its own personnel. The most obvious reason is that courts are ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have.'" *Dash, supra,* 307 F.Supp. at 853-854.

In discussing the validity of the Post Commander's prohibition of a public meeting on post, during which the servicemen would undoubtedly promulgate their thesis that the Viet Nam war was immoral and inhumane, the court observed that "to organize meetings on base, to seek to create of and within the military itself a cohesive force for the purpose of compelling political decisions—and political decisions directly related to the mission of the military itself—would undermine civilian government, especially civil control of the military, and would take from respon-

sible civilian government the power of decision." *Dash, supra,* 307 F.Supp. at 856. In rejecting the servicemen's contention that their right to hold meetings on base was analogous to the right of students to hold meetings on campus, the court observed that while "schools are places for 'open, vigorous, disputations, disturbing' discussions and speeches [this was] certainly not an apt description of a military training base." *Dash, supra,* 307 F.Supp. at 857.

The decisions of this Court disclose that the First Amendment rights of a citizen are necessarily circumscribed by the following factors: (1) the rights of the media; (2) the purposes to which public facilities have been dedicated; (3) the legitimate exercise of established governmental powers; and (4) the relationship between the status of the citizen and the achievement of important governmental objectives. In order to conclude that the district court erred in finding that "face-to-face interviews with media representatives are a vital element in the prisoners' rights under the First Amendment" (*Hillery v. Procunier, supra,* 364 F.Supp. 196, 200-201 (N.D.Cal. 1973), it is not necessary to define the perimeter of whatever rights a prisoner may have under the First Amendment. It is not even necessary to determine whether there would be included within such a perimeter a right of access to representatives of the media. As appellants repeatedly observed below, appellees have not asserted that they are precluded from directly communicating with representatives of the media by mail. (A. 14, 18, 47, 120, 199, 274). Appellants, more-

over, have demonstrated that inmates selected at random may be interviewed by news representatives (A. 57-58, 242-244, 258-259, 288-291, 300). All that is required to conclude that the court below erred is to apply these factors to the factual situation presented by this case in the light of "the considerations underlying our penal system." *Price v. Johnston, supra,* 334 U.S. 266, 285 (1948).

Just as is the case with a free citizen, an inmate's ability to meet face-to-face with a media representative is necessarily dependent upon the consent of the media representative. Accordingly, regardless of the context in which it is asserted, the purported right to meet face-to-face with a media representative is at most a conditional right. Moreover, where there is no showing that appellees are precluded from communicating in writing with representatives of the media (A. 14, 18, 47, 120, 199, 274) the significance of this conditional right is further reduced. As a consequence of "the considerations underlying our penal system" a prisoner's ability to meet face-to-face with a media representative is necessarily subject to even further curtailment. In discussing the limitations which necessarily restrict an inmate's practice of his religion, Justice Rehnquist observed: "He is assuredly not free to attend the church of his choice outside the prison walls." *Cruz v. Beto,* 405 U.S. 319, 324 (1972) (dissenting opinion). Accordingly, an inmate is not free to leave the institution in order to meet the press. Moreover, the "considerations underlying our penal system" necessarily limit the ability of an in-

mate to conduct a press conference within the walls of a correctional institution. Traditionally, such institutions are not open to the public. *Adderley v. Florida,* 385 U.S. at 39, 41 (1966). A reading of the visiting regulations which were in effect at the California State Prison at San Quentin on November 15, 1971, discloses that a member of the general public had no privilege to visit with a specifically designated inmate (A. 69-73). Considerations of security clearly dictate that meetings between inmates and others be closely supervised; considerations of rehabilitation clearly dictate that an inmate's associations with others be subject to restriction. Accordingly, the basic fact that a prisoner is not free to leave the institution and the basic fact that the public is not free to meet with a specific inmate within the institution, viewed in light of the institution's duty to maintain security and promote rehabilitation, suggest that "[l]awful incarceration brings about the necessary withdrawal or limitation" of an inmate's ability to conduct face-to-face interviews with representatives of the media.

A prisoner's ability to meet face-to-face with representatives of the media is necessarily circumscribed by the purposes to which correction facilities are dedicated. As recognized by this Court, such facilities are built for security purposes and traditionally they are not open to the public. *Adderley v. Florida, supra,* 385 U.S. 39, 41 (1966). Approximately 20,000 convicted felons are currently housed in the institutions of the California Department of Corrections (A. 281-282). The number of inmates and guards who have

been killed in these institutions in recent years (A. 256) demonstrates that it is essential that security be maintained within correctional institutions. As is the case with military institutions, " 'The need for discipline, with the attendant impairment of certain rights, is an important factor' " in the operation of correctional facilities. *Dash v. Commanding General, Fort Jackson, South Carolina, supra,* 307 F.Supp. 849, 852, aff'd 429 F.2d 427 (4th Cir. 1970), *cert, denied,* 401 U.S. 981. Similarly, to allow prisoners an absolute right "to seek to create of and within the [correctional institution] itself a cohesive force for the purpose of compelling political decisions—and political decisions directly related to the mission of the [correctional institution] itself—would undermine civilian government, especially civil control of the [correctional institutions], and would take from responsible civilian government the power of decision." *Dash, supra,* 307 F.Supp. at 856. If interviews with specific inmates serve to increase the status of such inmates as spokesmen for a policy of non-cooperation with the correctional system (A. 255, 287), this obviously impairs the ability of the correctional authorities to maintain security within the institution (A. 288). Accordingly, such interviews may be proscribed as they are inconsistent with one of the purposes to which correctional facilities are dedicated.

As observed by Director Procunier, correctional facilities are also dedicated to the rehabilitation of inmates (A. 292). Experience has demonstrated that the initial step in the rehabilitation of an inmate is the effectuation of a change in his attitude (A. 292).

"If a man is encouraged by increased notoriety and this encourages others to pursue the same thing, their attitude is such that [correctional authorities] can't deal with them in a constructive way." (A. 292-293). Just as an army "cannot function as a debating society" (*Dash, supra,* 307 F.Supp. at 852), a correctional institution cannot function as a press club. Just as a military training base is not a place for "'open, vigorous, disputations, disturbing' discussions and speeches" (*Dash, supra,* 307 F.Supp. at 857), a correctional facility is not a place where inmates can conduct public relations campaigns designed to establish themselves as spokesmen of a negative approach of non-cooperation with the institution. Justice Rehnquist has observed that "[n]one of our holdings under the First Amendment requires that, in addition to being allowed freedom of religious belief, prisoners be allowed freely to evangelize their views among other prisoners." *Cruz v. Beto,* 405 U.S. 319, 324 (1972) (dissenting opinion). Similarly, it is submitted that the First Amendment does not require that individual inmates must be allowed to meet face-to-face with representatives of the media for the purpose of freely promulgating the thesis that inmates who refuse to cooperate with the correctional system serve to change the system, while inmates who cooperate serve to perpetuate it (See A. 287).

A prisoner's actions are also necessarily circumscribed by the legitimate exercise of established governmental authority. As this Court has observed, "It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately

bound up with state laws, regulations, and procedures, than the administration of its prisons. The relationship of state prisoners and the state officers who supervise their confinement is far more intimate than that of a State and a private citizen." *Preiser v. Rodriguez,* 411 U.S. 475, 492 (1973). This Court has likewise recognized "that prison officials must be accorded latitude in the administration of prison affairs, and that prisoners necessarily are subject to appropriate rules and regulations." *Cruz v. Beto,* 405 U.S. 319, 321 (1972). By virtue of state law, "[t]he supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confiled therein are vested in the director." (Cal. Pen. Code § 5054). As state law requires that "[t]he Director of Corrections shall have wide and successful administrative experience in adult or youth correctional programs employing rehabilitative concepts" (Cal. Pen. Code § 5051.2), it must be assumed that the Director has the necessary expertise to legitimately exercise the powers which are vested in him. The extensive background of Diretcor Procunier clearly indicates his expertise in the field of corrections (A. 122, 280-281). Accordingly, when the Director determines upon the basis of his qualified assessment of conditions in the institution, that face-to-face interviews between specific inmates and representatives of the media threaten the maintenance of security and the promotion of rehabilitation (A. 287-288, 292-293), any right which an inmate might have had to such interviews must necessarily be circumscribed by such

a legitimate exercise of established governmental authority.

The relationship between the status of a prisoner and the achievement of legitimate governmental objectives is qualitatively different from the relationship between the status of a governmental employee or even of a serviceman and the achievement of such objectives. As observed by this Court: "The relationship of state prisoners and state officers who supervise their confinement is far more intimate than that of a State and a private citizen. For state prisoners, eating, sleeping, dressing, washing, working, and playing are all done under the watchful eye of the State, . . . What for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner, a dispute with the State." *Preiser v. Rodriguez, supra,* 411 U.S. 475, 492 (1973). Accordingly, while certain aspects of a governmental employee's or serviceman's activities are necessarily subject to restriction in order to achieve legitimate governmental objectives, all aspects of a prisoner's activities are necessarily subject to regulation in order to achieve the legitimate objectives of the penal system. The interest of the correctional system in maintaining security and in promoting rehabilitation is clearly no less significant than the interest of the government in immunizing its employees from political coercion or of the military in maintaining discipline and fostering loyalty. It is submitted that the status of the prisoner and the paramount interest of the correctional authorities in maintaining security and in

promoting rehabilitation necessarily require that interviews between the media and specific prisoners be prohibited when such interviews impair the ability of the correctional authorities to maintain security and promote rehabilitation.

"Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v. Johnston, supra,* 334 U.S. 266, 285 (1948). The above consideration of the physical realities of imprisonment, the purposes to which prison facilities are dedicated, the legitimate exercise by prison authorities of established governmental powers, and the status of a prisoner in relation to the achievement of the legitimate goals of the correctional system warrants the conclusion that the First Amendment does not require that individual inmates have a right to demand and to conduct face-to-face meetings with representatives of the media. Where individual inmates are afforded an opportunity to communicate in writing directly with representatives of the media, the necessary withdrawal of the ability to meet face-to-face with representatives of the media does not deprive the inmates of an essential avenue of communication.[12]

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[12] *Accord Seattle-Tacoma Newspaper Guild,* 480 F.2d 1062, 1065-1066 (9th Cir. 1973); *Mitford v. Pickett,* 363 F.Supp. 975, 977-978 (E.D.Ill. 1973) *(appeal pending); Smith v. Bounds,* ..... F.Supp. ....., Civ. 2914, Slip Op. at 3-5 (E.D.N.Car. March 14, 1972) *aff'd* No. 73-1658 (4th Cir. June 8, 1973); *contra Washington Post Co. v. Kleindienst,* 357 F.Supp. 770, 779 (D.D.C. 1972), *aff'd* ..... F.2d ..... (D.C. Cir. Feb. 21, 1974); *Houston Chronicle Pub. Co. v. Kleindienst,* ..... F.Supp. ....., No. 72-H-1657 (S.D.Tex. Aug. 24, 1973); *see, McMillan v. Carlson,* ..... F.Supp. ..... (Civ. 72-2551-M, D.Mass., Dec. 31, 1973).

## II

**PRISON OFFICIALS HAVE DISCRETION TO REGULATE AN INMATE'S ACCESS TO THE PRESS AND OTHER MEDIA BY PROCEDURES WHICH ARE RATIONALLY RELATED TO JUSTIFIABLE PURPOSES OF IMPRISONMENT.**

In *Price v. Johnston, supra,* 334 U.S. 266, 284-286 (1948), this Court stated: "[W]e emphasize that the power of a circuit court of appeals to issue [an order in the nature of a writ of *habeas corpus* commanding that a prisoner be brought to the courtroom to argue his own appeal] is discretionary. And this discretion is to be exercised with the best interests of both the prisoner and the government in mind. If it is apparent that the request of a prisoner to argue personally reflects something more than a mere desire to be freed temporarily from the confines of the prison, (footnote omitted), that he is capable of conducting an intelligent and responsible argument, and that his presence in the courtroom may be secured without undue inconvenience or danger, the court would be justified in issuing the writ. But if any of those factors were found to be negative, the court might well decline to order the prisoner to be produced. . . . Oral argument on appeal is not an essential ingredient of due process and it may be circumscribed as to prisoners where reasonable necessity so dictates." Accordingly, even in the context of a judicial proceeding, wherein the prisoner's life or liberty is at stake, the circuit courts of appeals may decline to afford the prisoner the occasion to meet face-to-face with the judicial officers who will decide his case, where the denial is rationally related to the purposes of the judicial proceeding. This Court noted that "[t]he discretionary nature of the power in

question rose out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. (Citation omitted)." *Price, supra,* 334 U.S. at 285. This limitation was premised on this Court's further observation that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a restraction justified by the considerations underlying our penal system." *Price, supra,* 334 U.S. at 285.

The district court concluded that California's limitation of face-to-face meetings between inmates and media representatives resulting from Section 415.071 could be sustained only if it was justified by a compelling state interest. *Hillery v. Procunier, supra,* 364 F.Supp. 196, 201 (N.D.Cal. 1973). Prisoners' activities are, however, necessarily and justifiably subject to limitation due to the considerations underlying the correctional system. Moreover, Section 415.071 does not create a suspect classification or impinge on any fundamental right retained by appellees. Prison authorities must necessarily have the discretion to impose regulations which are rationally related to the justifiable purposes of imprisonment. The district court erred in subjecting Section 415.071 to this searching standard of judicial review.

In *San Antonio School District v. Rodriguez,* 411 U.S. 1, 40 (1973), this Court reaffirmed that the compelling state interest analysis is "reserved for laws that create suspect classifications or impinge upon constitutionally protected rights." Since lawful in-

carceration necessarily brings about the withdrawal or limitation of many privileges and rights (*Price v. Johnston, supra,* 334 U.S. 266, 285 (1948), regulations which apply equally to all persons who, like appellees, are lawfully incarcerated do not create a suspect classification. Similarly, inasmuch as the necessary withdrawal or limitation of rights and privileges is justified by considerations underlying the penal system (*Price, supra,* 334 U.S. at 285), a conclusion that regulation of prisoners' activities necessarily impinges on some fundamental interest is unfounded. In two recent decisions involving the rights of convicted persons and prisoners, this Court limited its inquiry into the validity of the challenged statutes to a determination of whether the distinctions were rationally related to the furtherance of a legitimate objective. *Marshall v. United States,* ..... U.S. ....., 94 S.Ct. 700, 705-706 (1974); *McGinnis v. Royster,* 410 U.S. 263, 270 (1973). This is the appropriate scope of inquiry for all regulations affecting prisoners.

In *McGinnis,* the challenged distinction was the denial of good time credit for pre-sentence incarceration in county jails, and the underlying interest of the prisoner was the establishment of the minimum date on which he would be eligible to appear before the Parole Board. *McGinnis v. Royster,* 410 U.S. 263, 264-267 (1973). This Court of course has recognized "that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on

the parolee and often on others. . . . By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment." *Morrissey v. Brewer,* 408 U.S. 471, 482 (1972). Nevertheless, in evaluating the challenged state statute, this Court articulated the limited nature of the review: "We do not wish to inhibit state experimental classifications in a practical and troublesome area, but inquire only whether the challenged distinction rationally furthers some legitimate, articulated state purpose." *McGinnis, supra,* 410 U.S. at 270.

In *Marshall,* the challenged distinction was the denial of a rehabilitative commitment to a person who had suffered two prior felony convictions, and the underlying interests of the convicted person was the opportunity to be referred to a rehabilitative commitment rather than to a penal institution. *Marshall v. United States, supra,* ..... U.S. ....., 94 S.Ct. 700, 702-703 (1974). Although such a rehabilitative commitment does not offer the same conditional right to liberty afforded by parole, it clearly offers a greater degree of liberty than confinement in a penal institution. Again, in evaluating the challenged federal statute, this Court stated: "The question we are called upon to decide is whether Congress could rationally have assumed that a person, who has committed two or more prior felonies and is an addict at the time sentence is to be imposed is likely to be less susceptible to rehabilitation by reason of his past record, thus posing a greater threat to society upon release." *Marshall, supra,* 94 S.Ct. at 705-706.

The distinctions which were challenged in *McGinnis* and in *Marshall* were in effect distinctions among convicts and prisoners as opposed to distinctions between prisoners and free citizens. *But see Marshall, supra,* 94 S.Ct. at 707. The underlying interests in *McGinnis* and in *Marshall* were the interests in a qualified right to liberty and the interests in a qualitatively distinguishable form of confinement. The appropriateness of the rational basis test for a determination of the validity of regulations drawing such distinctions and effecting such interests indicates that such a test is appropriate for all regulations affecting prisoners.[13] Regardless of whether it would be possible to postulate a regulation affecting all prisoners which would create a suspect classification[14] or impinge on a fundamental interest, Section 415.071 certainly is not such a regulation.

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[13]A reasonableness standard has been invoked by some courts to evaluate regulations which impair the practice of religion (*O'Malley v. Brierley,* 477 F.2d 785, 795 (3d Cir. 1973); *Sharp v. Sigler,* 408 F.2d 966, 971 (8th Cir. 1969) (opinion by Justice Blackmun); *see also Cruz v. Beto,* 405 U.S. 319, 324-326 (1972) (dissenting opinion by Justice Rehnquist)), and which limit social correspondence (*Sostre v. McGinnis,* 442 F.2d 178, 199 (2d Cir. 1971)), and efforts by prisoners to propagandize (*McCloskey v. State of Maryland,* 337 F.2d 72, 74 (4th Cir. 1964); *see also McDonough v. Director of Patuxent,* 429 F.2d 1189, 1193 (4th Cir. 1970)).

[14]In *Lee v. Washington,* 390 U.S. 333, 334 (1968), this Court affirmed a decree which declared that certain state statutes were in violation of the Fourteenth Amendment insofar as they required racial segregation in jails and prisons. Although race is traditionally viewed as a suspect classification, three justices stated: "In joining the opinion of the Court, we wish to make explicit something that is left to be gathered only by implication from the Court's opinion. This is that prison authorities have the right, acting in good faith in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails. We are unwilling to assume that

Before the strict judicial scrutiny of the compelling state interest test will be applied to a statute which distinguishes individuals or groups of individuals, the statute must totally deny some desired benefit to the members of the class, and as a consequence, the members of the class must suffer a total deprivation of the desired benefit. *San Antonio School District v. Rodriguez,* 411 U.S. 1, 20 (1973); *see also Rosario v. Rockefeller,* 410 U.S. 752, 757 (1973). However, a provision such as Section 415.071 which applies to all prisoners, as opposed to a regulation which pertains to only certain prisoners, is *sui generis* and does not fit within this analysis. *See also San Antonio School District, supra,* 411 U.S. at 18. This Court has recognized "that prisoners necessarily are subject to appropriate rules and regulations." *Cruz v. Beto,* 405 U.S. 319, 321 (1972). Unquestionably, the scope of prisoners' activities which are subject to regulation is necessarily broad. "The relationship of state prisoners and the state officers who supervise their confinement is far more intimate than that of a State and a private citizen. For state prisoners, eating, sleeping, dressing, washing, working, and playing are all done

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state or local prison authorities might mistakenly regard such an explicit pronouncement as evincing any delusion of this Court's firm commitment to the Fourteenth Amendment's prohibition of racial discrimination." 390 U.S. at 334 (concurring opinion). In *Cruz v. Beto,* 405 U.S. 319 321 (1972) this Court confirmed this view, stating, "Moreover, racial segregation, which is unconstitutional outside prisons, is unconstitutional within prisons, save for 'the necessities of prison security and discipline.' *Lee v. Washington,* 390 U.S. 333, 334." This suggests that even distinctions based upon race may be valid if they are rationally related to the furtherance of security, discipline, and good order.

under the watchful eye of the State, . . . What for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner, a dispute with the State." *Preiser v. Rodriguez,* 411 U.S. 475, 492 (1973). A regulation which applies to all prisoners does not create a suspect classification.

Moreover, even if the compelling state interest analysis were employed, Section 415.071 still does not create a suspect classification. Section 415.071 does not deny to all prisoners the opportunity to meet face-to-face with representatives of the press; Section 415.071 does not bar press representatives from the state's correctional institutions, nor does it bar inmates in general from being interviewed by press representatives (A. 57-58, 282, 288). Press representatives may tour the institutions and they may interview any inmate on any subject (A. 243-244, 290). If the press representative happens to be familiar with an inmate, he is not precluded from talking to him (A. 259). Likewise, inmates are not precluded from asking the press representative whether he wishes to talk with them (A. 599). If security considerations permit, prison personnel will step aside in order that the interview can be conducted in confidence (A. 244, 300).

Section 415.071 does not prohibit press representatives from gathering information for a story on a specific topic, nor does it bar inmates in general who have information pertaining to the topic from being interviewed (A. 242). If the press representative

wishes to write a story on a specific institutional program, he may sit in on the program and the inmate participants may be interviewed by him (A. 243). Although the press representative may not designate by name a specific inmate to be interviewed, he may designate a group of inmates to be interviewed. For example, when one of California's major newspapers informed the Department that it wished to do a story on the death penalty and wished to obtain the opinions of men who had had a death sentence commuted to a life sentence, the Department supplied the reporters with a list of inmates who were in this category and the reporters then interviewed the inmates (A. 242-243, 289). Similarly, at the time that death row was being phased out at San Quentin State Prison, a television reporter asked to film activities on death row and to speak to inmates whom he might encounter. The television reporter was permitted to conduct this film interview (A. 243). Although a specific inmate cannot demand that he be interviewed by a representative of the press, any inmate who is randomly selected may speak directly with the representative of the press.

Section 415.071 does not deprive any prisoner of an opportunity for direct communications with representatives of the press. By its terms, Section 415.071 applies only to interviews. Throughout the proceedings below, appellants repeatedly pointed out that the Department permitted individual inmates to send letters and manuscripts to media representatives, and that appellees had never alleged that the Department

had in any way interfered with their written communications (A. 14, 18, 47, 120, 199, 274). The pleadings dispel any suggestion that appellees were illiterate and incapable of effectively utilizing such an avenue of communication with representatives of the press. The complaint was filed by appellee Hillery *in pro per* and alleged that he was the owner of two short stories (A. 7). The amended complaint alleged that "[t]he purpose of such visits is to discuss publication of articles written by the prisoners and/or is to gain information for articles to be written by the visiting reporter." (A. 23). The amended complaint realleged that inmate Hillery was the author of two short stories (A. 26), and further alleged that appellee Spain "is a talented black writer" and that "[o]ne of his letters has already been published in a recent book, edited by plaintiff PELL, *Maximum Security*, Dutton 1972." (A. 27; see also A. 159-163).

Accordingly, even under the compelling state interest test Section 415.071 does not create a suspect classification. Rather, the determination to limit face-to-face interviews to inmates who are randomly selected represents a policy choice by the Director, who is vested with the authority to make such administrative decisions. Cal. Pen. Code § 5054; *see Marshall v. United States, supra,* ..... U.S. ....., 94 S.Ct. 700, 707 (1974).

Similarly, the strict judicial scrutiny involved in the compelling state interest test is inapplicable as Section 415.071 does not impinge on any fundamental rights retained by appellees. As set forth above, the

physical realities of imprisonment, the purposes to which prison facilities are dedicated, the legitimate exercise by prison authorities of established governmental powers, and the status of a prisoner in relation to the achievement of the legitimate goals of the correctional system warrant the conclusion that the First Amendment does not require that individual inmates have a right to demand and to conduct face-to-face meetings with representatives of the media (*supra,* at 36). Even assuming *arguendo* that some access to representatives of the press is a fundamental right which is retained by appellees, this right can be exercised by directing written communications to the representatives of the press. *Cf. San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 36-37 (1973).

In rejecting a contention that education was a constitutionally protected right, this Court made the following observation: "The Court has long afforded zealous protection against unjustifiable governmental interference with the individual's right to speak . . . Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech . . . That these may be desirable goals of a system of free expression . . . is not to be doubted. (Footnote omitted). These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities." *San Antonio School District v. Rodriguez,*

*supra,* 411 U.S. 1, 36 (1973). Assuming *arguendo* that while prisoners do not retain a right to meet face to face with representatives of the press they do retain a right to some access to the press, it is submitted that this reasoning is equally applicable to any suggestion that written communications to the media or communications to the media through family members, friends, attorneys, or clergymen are an ineffective vehicle for inmate access to representatives of the press.

As Section 415.071 does not create a suspect classification and as it does not impinge on any fundamental right retained by appellees, this is not a case wherein the challenged state action is subject to the strict judicial scrutiny of the compelling state interest test. *San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 40 (1973). Rather, the appropriate inquiry is whether the distinction drawn by Section 415.071 is rationally related to the furtherance of some legitimate consideration underlying our penal system. *Seattle-Tacoma Newspaper Guild v. Parker,* 480 F.2d 1062, 1065 (9th Cir. 1973); *see Price v. Johnston, supra,* 334 U.S. 266, 285 (1948); *McGinnis v. Royster, supra,* 410 U.S. 263, 270 (1973); *Marshall v. United States, supra,* ..... U.S. ....., 94 S.Ct. 700, 705-706 (1974).

In addition to the inappropriateness of the strict scrutiny test, other considerations affirmatively sustain the application of the traditional standard, which requires that the state demonstrate only that its action is rationally related to the furtherance of a legit-

imate state purpose. *Cf. San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 40-44 (1973).

The standard of rationality is peculiarly appropriate when a proper determination must necessarily be based on an informed knowledge of local conditions. *See San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 40-41 (1973). As this Court has recognized, "the relationship of state prisoners and the state officers who supervise their confinement is far more intimate than that of a State and a private citizen. For state prisoners, eating, sleeping, dressing, washing, working and playing are all done under the watchful eye of the State, . . . What for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor or with his banker becomes, for the prisoner, a dispute with the State. Since these internal problems of state prisons involve issues so peculiarly within state authority and expertise, the States have an important interest in not being bypassed in the correction of those problems." *Preiser v. Rodriguez, supra,* 411 U.S. 475, 492 (1973). The adoption of Section 415.071 was preceded by a careful consideration of the alternative solution to the problems facing the Department. Director Procunier repeatedly consulted with his own staff in order to arrive at a solution for controlling the problems which had arisen under the Department's previous interview policy (A. 302). The Department attempted to have a modified version of Section 415.071, but found that it would not work (A. 302); imposition of a selected regulation was rejected as

legally suspect (A. 303). As stated by Director Procunier, Section 415.071 was prescribed as an administrative remedy only "after a great deal of agonizing . . ." (A. 302). In the area of prison administration, where such decisions must necessarily be premised upon an informed knowledge of the conditions existing within the local institutions, local correctional authorities must be permitted to make choices which are dictated by rational considerations.

The standard of rationality is likewise appropriate where the determination must necessarily involve a policy choice in a field which is fraught with uncertainties. *See San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 42-43 (1973); *Marshall v. United States, supra,* ..... U.S. ....., 94 S.Ct. 700, 706-707 (1974). This Court has recognized "that prison officials must be accorded latitude in the administration of prison affairs, . . ." *Cruz v. Beto, supra,* 405 U.S. 319, 321 (1972). The determination of what administrative remedies are necessary in order to maintain the security of correctional institutions and in order to promote the rehabilitation of prisoners is obviously one which is dependent upon expert knowledge, and on which rational persons might disagree. Director Procunier has had approximately 26 years of experience in the field of corrections. With the exception of approximately one year, this experience has been gained as an employee of the California Department of Corrections. Before becoming Director, appellant Procunier held a variety of institutional and departmental positions (A. 122, 280-281). Given

Director Procunier's extensive experience in the field of corrections, it would be inappropriate to restrict his administrative determinations to the strict scrutiny test. Moreover, given the awesome consequences which can flow from a failure to maintain security or to promote rehabilitation, such a limitation could result in unconscionable costs to all concerned. The murder of guards and inmates, the commission of new crimes by released inmates who were not rehabilitated, and the over-crowding of correctional institutions with the resulting heightening of tensions are clearly costs which cannot be tolerated. "In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to [correctional] problems and to keeping abreast of ever-changing conditions." *San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 43 (1973).

Finally, "[q]uestions of federalism are always inherent in the process of determining whether a State's laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to vigorous judicial scrutiny." *San Antonio School District v. Rodriguez, supra,* 411 U.S. 1, 44 (1973). As this Court has recognized, "it is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser v. Rodriguez, supra,*

411 U.S. 475, 491-492 (1973). Accordingly, it is appropriate that in reviewing the validity of state regulations pertaining to a state's correctional system, that the inquiry be whether the state regulation bears a rational relationship to the furtherance of a legitimate objective of the penal system.

These considerations further sustain the conclusion that the compelling state interest test used by the district court is an inappropriate standard by which to evaluate Section 415.071. These considerations demonstrate that prison authorities must necessarily have the discretion to regulate an inmate's access to the press and other media by regulations which are rationally related to the justifiable purposes of imprisonment. *Mitford v. Pickett,* 363 F.Supp. 975, 977-978 (E.D. Ill. 1973) *appeal pending*; *Smith v. Bonds,* ..... F.Supp. ....., Civ. 2914 (E.D. N.Car. Mar. 14, 1972) aff'd No. 73-1658 (4th Cir. June 8, 1973); *Seale v. Manson,* 326 F.Supp. 1375, 1383 (D. Conn. 1971).

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## III

**THE LIMITATIONS OF AN INMATE'S ACCESS TO THE PRESS AND OTHER MEDIA TO WRITTEN COMMUNICATIONS AND TO FACE-TO-FACE MEETINGS DEPENDENT UPON THE RANDOM SELECTION OF INMATE INTERVIEWEES IS RATIONALLY RELATED TO THE JUSTIFIABLE PURPOSES OF IMPRISONMENT.**

Under the test of rationality, a state provision "must be respected if the 'distinctions drawn have some basis in practical experience' (citation omitted),

or if some legitimate state interest is advanced, (citations omitted). So long as the state purpose upholding a statutory class is legitimate and non-illusory, its lack of primacy is not disqualifying." *McGinnis v. Royster, supra,* 410 U.S. 263, 276 (1973). As prison administration is an area fraught with uncertainties, this Court's admonition in *Marshall* that "options must be especially broad and courts should be cautious not to rewrite legislation, even assuming, *arguendo,* that judges with more direct exposure to the problem might make wiser choices" is appropriate. *Marshall v. United States, supra,* ..... U.S. ....., 94 S.Ct. 700, 706 (1974). "The Court has frequently noted that legislative classifications need not be perfect or ideal." *Marshall, supra,* 94 S.Ct. at 707. As prison administration is an area which requires determinations based upon expertise and past experience, it is likewise appropriate to note this Court's observation that "[t]he fact that a congressional directive reflects unproven assumptions about what is good for the people, . . . , is not a sufficient reason to find that statute unconstitutional." *Paris Adult Theatre I v. Slaton,* ..... U.S. ....., 93 S.Ct. 2628, 2638 (1973). The Constitution does not preclude states from acting on the basis of past experience and assumptions regarding human behavior "simply because there is no conclusive evidence or empirical data." *Paris Adult Theatre I, supra,* 93 S.Ct. at 2638. Finally, in order for a state provision to be sustained under the rationality test, it is not necessary that the provision be the least restrictive alternative. *San Antonio*

*School District v. Rodriguez, supra,* 411 U.S. 1, 50-51 (1973).[15]

When these principles are applied to the facts of this case, it can only be concluded that the Department's determination to limit an inmate's access to press and other media to written communications and to face-to-face meetings dependent upon the random selection of inmate interviewees is rationally related to justifiable purposes of imprisonment. It is likewise apparent that the state has a compelling interest in the achievement of these justifiable purposes of imprisonment. Accordingly, even if this were a case which required strict judicial scrutiny, it would have to be concluded that the district court erred in finding that Section 415.071 failed to withstand such scrutiny.

Director Procunier's position is that the Department of Corrections has a dual obligation: first, it must insure that persons who are committed to state institutions are housed securely; second, it must do everything within its power and resources to prepare such persons to return to society (A. 292). The maintenance of security and the fostering of rehabilitation are obviously justifiable purposes of our penal system. *See McGinnis v. Royster, supra,* 410 U.S. 263, 274-276 (1973). It is further submitted that the state has a compelling interest in assuring that these

[15]Even under circumstances where a state is required to select the alternative which is the least restrictive, the Constitution does not require that the state use a cumbersome alternative which would be virtually ineffectual. *Rosario v. Rockefeller,* 410 U.S. 752, 762 n. 10 (1973).

dual objectives are fulfilled. It is readily apparent that the failure of security can result in serious loss of life within the institutions (*see* A. 256). It is likewise readily apparent that a failure in rehabilitation could result in deferring release of prisoners and thus producing over-crowded conditions or it could result in premature release resulting in new crimes in society. This latter possibility would necessarily lead to further burdens upon the judicial process and further over-crowding within correctional institutions. In short, the failure to achieve these objectives could lead to an unending and ever-expanding cycle of crime with all its collateral costs to society.

The Department's decision to adopt limitations regarding inmate interviews with the press and other media was prompted by a tragic occurrence during which three staff members and two inmates were killed, and was premised on a judgment that the Department's former practice had adversely affected prison security and the rehabilitation of inmates, and had imposed serious burdens on the correctional officers (A. 287-288, 292-293, 296-297). *Hillery v. Procunier, supra,* 364 F.Supp. 196, 198 (N.D.Cal. 1973). Prior to settling upon the policy of Section 415.071, the Department had permitted named inmates to be interviewed by accredited representatives of the news media (A. 282, 286). Certain named inmates became the subject of extensive press coverage. For example, one inmate held 66 interviews over an 18-month period (A. 297). Another inmate, who subsequently was killed during the escape attempt of August 21, 1971,

held 33 interviews from August of 1970 through June of 1971 (A. 285-286). Partially as a result of the extensive press attention, this inmate became, in effect, a public figure (A. 285). This inmate utilized his frequent contact with the press as a vehicle for reaching dissident inmates. His message to such inmates was essentially that the manner in which to alter the correctional institution was to be non-cooperative, and that any cooperation would serve to perpetuate the correctional system (A. 287).

The Department determined that an augmentation of disciplinary problems within the institution was in part the result of the expansive press coverage which was being afforded to inmates who advocated a policy of non-cooperation (A. 287-288). It was the Department's opinion that in terms of management principles, these were destructive messages (A. 287). It was believed that the security risk imposed by an inmate was increased as press coverage of the inmate increased (A. 263).

The Department viewed the tragic events of August 21, 1971, as partially attributable to the extensive press attention which had been afforded to one of the inmates who had been killed on that day (A. 249). The Department's concern was that the extensive press exhibition afforded to this inmate had served to magnify his negative leadership role, and to influence other inmates to adopt an attitude of non-cooperation (A. 287). The Department believed that the extensive press coverage had created in this inmate a false sense of status, and had conveyed to

other inmates who were confined in the same lock-up unit with him a false perception of him, and that this had contributed to the tragic occurrences of August 21 (A. 255).

One of the major considerations which led Director Procunier to conclude that a modification of policy was essential was the adverse effect which the Department's unrestricted interview policy was having on the Department's ability to rehabilitate inmates (A. 292-293). As a result of years of experience, Director Procunier and his staff had concluded that before an inmate makes any kind of a change, there must first be a change in his attitude (A. 292). As stated by Director Procunier "[i]f a man is encouraged by increased notoriety and this encourages others to pursue the same thing, their attitude is such that we can't deal with them in a constructive way." (A. 292-293). The Department felt strongly that the extensive press coverage afforded to an inmate who espoused the practice of non-cooperation encouraged other inmates to adopt this attitude and impaired the Department's efforts to deal with the inmates in a constructive manner (A. 292-293).

The Department was also concerned with the time and effort which was involved in escorting inmates and newsmen under the unrestricted policy (A. 247). If an inmate was in lock-up status, a half-day of employee time was necessary in order to hold an interview of one hour or less (A. 296-297). As approximately 20,000 convicted felons are currently housed in the state's institutions (A. 281-282), the

potential administrative burden on the unrestricted policy is staggering. If only 10 per cent of the inmates held semi-annual interviews, the Department's staff would be required to arrange some 4,500 interviews (A. 130). Due to the wide coverage afforded an inmate under the unrestricted policy, the Department also found that it would be administratively impossible to review all incoming publications which covered the interviews (A. 286-287).

The Department's decision to alter its unrestricted policy regarding inmate interviews was thus premised on its determination that the unrestricted policy impaired the Department's ability to fulfill its dual obligations to maintain security and to foster rehabilitation, and imposed a serious burden on the administration of the state correctional facilities (A. 286-288, 292-293, 296-297). Section 415.071 was prescribed as an administrative remedy only "after a great deal of agonizing . . ." (A. 302). Its adoption was preceded by careful consideration of alternative solutions to the problems facing the Department. Director Procunier repeatedly consulted with his own staff in order to arrive at a solution for controlling the problems which had arisen under the Department's previous interview policy (A. 302). The Department attempted to have a modified version of Section 415.071, but found that it would not work (A. 302); imposition of a selective regulation was rejected as illegally suspect (A. 303).

It is apparent that the source of the various problems which had arisen under the unrestricted policy

was that under such a policy specific individual inmates could become the subject of extensive press coverage (A. 249). Section 415.071 is a narrow and precise regulation which eliminates this problem. Section 415.071 provides only that "Press and other media interviews with specific individual inmates will not be permitted." As found by the district court, "[t]he regulation does not effect an absolute ban on all media interviews with inmates." *Hillery v. Procunier, supra,* 364 F.Supp. 196, 199 (N.D.Cal. 1973).

In summary, an unrestricted interview policy will impair the Department's ability to maintain security and promote rehabilitation, and will impose serious administrative burdens on the administration of correctional facilities. Specific individual inmates have no enforceable right to monopolize press attention and to thereby impair the Department's ability to fulfill its dual obligation. As Section 415.071 serves to preclude the recurrence of such situations, it must be concluded that it is rationally related to the furtherance of the state's compelling interest in preserving security and fostering rehabilitation.

## CONCLUSION

For the reasons set forth above, it is respectfully submitted that the order of the district court granting appellees' summary judgment and declaratory relief and enjoining the enforcement of Section 415.071 of the California Department of Corrections Manual be reversed.

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